

COMMISSION DIRECTIVE

ADMINISTRATIVE MATTERS	<input type="checkbox"/>	DATE	<u>February 25, 2009</u>
MOTOR CARRIER MATTERS	<input type="checkbox"/>	DOCKET NO.	<u>2007-358-E</u>
UTILITIES MATTERS	<input checked="" type="checkbox"/>		<u></u>

SUBJECT:

DOCKET NO. 2007-358-E - Application of Duke Energy Carolinas, LLC for Approval of Energy Efficiency Plan Including an Energy Efficiency Rider and Portfolio of Energy Efficiency Programs - Discuss this Matter with the Commission.

COMMISSION ACTION:

This matter comes before the Commission as a result of correspondence from Counsel for Duke Energy Carolinas, LLC ("Duke"), which was received at the Commission on February 19, 2009, and which purportedly gave the Commission the "ten-day notice" that it has failed to timely issue an order in a rate case under South Carolina Code Section 58-27-870(C).

By way of its letter, Duke seeks to compel the Commission to issue its order ruling upon Docket No. 2007-358-E, the Company's Application for Approval of Energy Efficiency Plan, including an Energy Efficiency Rider and Portfolio of Energy Efficiency Programs, more commonly known as "save-a-watt". However, our examination of the relevant statutes and regulations, along with a review of Duke's filings in this docket, confirm that "save-a-watt" was not brought as a rate case, and is not subject to the six-month deadline for issuance of an order required by South Carolina Code Section 58-27-870(B). Because this docket is not a rate proceeding as contemplated in Section 58-27-870, Duke is not entitled to compel action by this Commission by way of filing its alleged ten-day notice.

From its beginning, this docket has not been characterized by Duke as a rate case, but as an application for approval of an energy efficiency plan brought under South Carolina Code Section 58-37-20. Duke's decision not to file a notice of intent to seek to implement new rates thirty days prior to filing its application, as required of all rate proceedings by South Carolina Code Section 58-27-860, confirms that save-a-watt was not filed as a rate case. Additionally, Duke did not provide the typical test-year data required by Commission Regulation 103-823(A)(3).

In fact, Duke's own expert witness, Dr. Charles J. Cicchetti, testified that the proceeding at issue was not a rate case. In testimony before the Commission, Dr. Cicchetti repeatedly insisted that an energy efficiency plan such as save-a-watt should not be pursued in a rate proceeding. For instance, on pages 910 and 911 of the hearing transcript, Dr. Cicchetti explicitly stated: "**A rate case is not the place to consider and approve an innovative new business model for energy efficiency regulation, such as save-a-watt.**" Dr. Cicchetti later adds, on cross-examination: "**Nobody's asking for a rate case.**"

Clearly, at the time of the hearing, neither the Commission nor Duke viewed this proceeding as a rate case. Having failed to meet the threshold statutory and regulatory requirements for filing a rate case, Duke cannot now demand enforcement of the six month deadline in the rate case statute. To do so is disingenuous, and inappropriate.

In its letter of February 19, 2008, Duke also asserts that if the Commission does not approve save-a-watt it could:

jeopardize Duke's ability to assist the state in obtaining funding for energy efficiency programs created by Title VII of the 2009 American Recovery and Reinvestment Act (also known as the "Stimulus Bill") because such grants will be limited to the expansion of existing energy efficiency programs "approved" by the Commission.

While Duke did not provide a more specific citation to the Stimulus Bill, we believe that it is referring to the Competitive Grants which may be awarded by the Secretary of Energy pursuant to Section 2, Title IV, Section 410 of the Stimulus Bill. I have examined this provision and I am satisfied that it does not require approval of save-a-watt in order for the state to be eligible for these competitive grants. The competitive grants provision contemplates funding for "the **expansion** of existing energy efficiency and renewable energy programs", and I don't believe that this language would preclude funding of future energy efficiency measures for any of our state's electric and gas utilities, all of which already have energy efficiency plans in effect, in one form or another.

Nevertheless, I don't wish to delay action on save-a-watt or energy efficiency programs in general, and I am sure that my fellow Commissioners don't either. I would suggest that we dispose of the Company's application today.

A review of Section 58-37-20 reveals that, if the Commission adopts an energy efficiency program, it must have the following characteristics:

- Provide incentives and cost recovery for energy suppliers and distributors who invest in energy supply and end-use technologies that are cost effective, environmentally acceptable, and

reduce energy consumption or demand,

- Allow energy suppliers and distributors to recover costs,
- Allow energy suppliers and distributors to obtain a reasonable rate of return on their investment in qualified demand-side management programs sufficient to make these programs at least as financially attractive as construction of new generating facilities,
- Have rates and charges that ensure that the net income of an electrical or gas utility regulated by the Commission after implementation of specific cost-effective energy conservation measures is at least as high as the net income would have been if the energy conservation measures had not been implemented.

Section 58-37-20 does not force this Commission to adopt the save-a-watt PURPA avoided cost compensation model for energy efficiency programs. Even Duke Energy concedes as much in its brief, merely suggesting instead that PURPA avoided cost is an appropriate option for the Commission.

While the Commission values energy efficiency, and is determined to have viable and effective energy efficiency programs in place for each of our regulated utilities in the near future, the record before us does not support the save-a-watt proposal for the following reasons:

- 1) The proposed program's complexity results in a lack of transparency to customers and regulators. The resulting difficulty in explaining a utility's program to the public is contrary to traditional regulatory principles. The underlying data used in calculating Duke's PURPA avoided costs is confidential, which only adds to the program's complexity and lack of transparency. Customers should understand how much they will pay for energy efficiency programs and why.
- 2) Save-a-watt does not limit the actual rate of return that the company could earn on an energy efficiency program. The possibility exists that Duke will earn an unreasonably high profit on at least some of its energy efficiency and demand side management programs. In some cases, the profits could exceed 100% of Duke's costs. While Duke's witnesses insisted that such a scenario was not likely, they could not convincingly deny its possibility.
- 3) The save-a-watt program does not give the Commission, or the Office of Regulatory Staff, or other parties sufficient input into the selection, implementation, balancing of, and possible cancellation of programs.
- 4) The settlement agreement lacks sufficient safeguards against the problems that I have mentioned. It would be very difficult to conduct a meaningful review of the save-a-watt programs two years

from now, as many of the proposed energy efficiency programs will have a horizon that is much longer than two years. Although up front expenditures will already have been made, and customers will already be paying for these programs, it will be difficult to verify the success of these programs, let alone terminate them, two years from now.

While my proposed motion does not rule out the possibility that avoided cost could serve as the basis for compensation in an energy efficiency program, departing from the transparency and accountability of a traditional cost-based model proposes real challenges, and, in this case, the proposal before us must be denied for the reasons I have previously stated.

I do not want my fellow commissioners, or the public, to misinterpret this motion as a vote against energy efficiency. This Commission has made clear that it is determined to see strengthened energy efficiency programs in place for each of the state's regulated utilities implemented in the very near future – I would like to see them all implemented within the year. I commend Duke for being the first company to file a proposal with us. However, it is critical that we implement a viable, understandable, transparent and cost effective energy efficiency program that will enjoy the long term support of the company's customers.

I urge the Company to return with a proposal designed to address the Commission's concerns. I am confident that this Commission is prepared to take extraordinary measures to consider a new proposal on an expedited basis while ensuring that all interested parties have an opportunity to be heard.

PRESIDING	<u>HOWARD</u>					
	MOTION	YES	NO	OTHER	APPROVED	<input type="checkbox"/>
					APPROVED STC 30	<input type="checkbox"/>
					DAYS	
CLYBURN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		ACCEPTED FOR FILING	<input type="checkbox"/>
FLEMING	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		DENIED	<input type="checkbox"/>
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		AMENDED	<input type="checkbox"/>
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		TRANSFERRED	<input type="checkbox"/>
MITCHELL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		SUSPENDED	<input type="checkbox"/>
WHITFIELD	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Abstaining	CANCELED	<input type="checkbox"/>
WRIGHT	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		SET FOR HEARING	<input type="checkbox"/>
Session:	Regular				ADVISED	<input type="checkbox"/>
Time of Session	<u>2:30 PM</u>				CARRIED OVER	<input type="checkbox"/>
					RECORDED BY	<u>Schmieding</u>

Commissioner Whitfield was not on the Commission at the time of the hearing.